

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

MASON and JEWEL COOK,

No. 05-12491

Debtor(s).

MASON COOK,

Plaintiff(s),

v.

A.P. No. 08-1058

RAMOND BOLGER,

Defendant(s).

Memorandum on Motion for Summary Judgment

This is an action to avoid an allegedly unauthorized postpetition transfer. Plaintiff Mason Cook, who is one of the two Chapter 11 debtors in possession, alleges that after the bankruptcy filing he voluntarily gave defendant Ramond Bolger a security interest in a vehicle to secure a prepetition debt. He further alleges that Bolger later seized the vehicle and sold it to satisfy Cook's obligation to him.


Defendant has moved for summary judgment on grounds that the transfer was not property of the estate, and on grounds that this action is barred by the doctrine of claim preclusion (res judicata).

1 The first issue is readily disposed of. While the vehicle was registered to another entity, Cook has
2 filed a declaration which states that the entity was a name under which he did business as an individual. There
3 is accordingly a triable issue of fact as to whether the vehicle was property of the estate.

4 Bolger alleges that the court confirmed a Chapter 11 plan on March 28, 2008 which did not preserve
5 this action, so it is barred by the doctrine of claim preclusion. *In re Kelley*, 199 B.R. 698, 704 (9th Cir. BAP
6 1996). However, the docket shows that on that date the court only announced that it would confirm the
7 plan. No order was entered until December 9, 2008, after the plan had been amended to specifically
8 preserve this adversary proceeding. In order to have preclusive effect, a judgment must be final. There was
9 no final judgment until the order confirming the plan was entered, and that judgment preserves the right to
10 prosecute this adversary proceeding.

11 For the foregoing reasons, the motion for summary judgment will be denied. Either party may submit
12 an appropriate form of order.

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14 Dated: December 17, 2008

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18 Alan Jaroslovsky
19 U.S. Bankruptcy Judge
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